



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/CV/23/4267

Re: Property at 21 Whitehills Square, ., AB12 3SW (“the Property”)

Parties:

Mrs Gaynor Barrie and Mr John Barrie, 11 Charleston Place, -, AB12 5QB (“the Applicants”)

Mrs Amanda Hayward, 8 Milton View, Kemnay, AB51 5EW (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent failed to comply with his duty as a Landlord in terms of Regulations 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”) as amended by The Housing (Scotland) Act 2014 (Consequential Provisions) Order 2017 by failing to pay the Applicants’ Tenancy Deposit to the scheme administrator of an Approved Tenancy Deposit Scheme grants an Order against the Respondent for payment to the Applicants of the sum of SEVEN HUNDRED POUNDS (£700) Sterling.

Background

1. This is an application dated 18 November 2023 for an order for payment for where it is alleged the Respondent has not paid a deposit into an approved scheme under the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The Application is made under Rule 103 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The Application was accompanied by a copy of a Private Residential Tenancy Agreement commencing on 20 August 2020, various emails between the parties, an undated letter from the Applicants, a screen shot of payments made to the Respondent and a screen shot from Safe Deposits Scotland dated 15 November 2023.
3. On 5 January 2024, the Tribunal accepted the Application under Rule 9 of the Regulations 2017.
4. The Tribunal advised parties that a Case Management Discussions (“CMD”) under Rule 17 of the Regulations would proceed on 3 April 2024.
5. The Respondent lodged written submission on 12 March 2024 in terms of which he admitted the deposit had not been paid to a scheme administrator on time and as soon as he realised this, he lodged the deposit with a scheme administrator.

Case Management Discussion

6. The Tribunal proceeded with CMD on 3 April 2024 by way of teleconference. Mrs Barrie appeared for the Applicants. Mr Hayward appeared on the Respondent’s behalf.
7. Parties were in agreement that the tenancy started on 20 August 2020 and ended on 12 November 2023. Parties were also in agreement that although Clause 10 of the tenancy agreement provided for payment of a deposit of £695, the deposit paid to the Respondent was in fact £700.
8. The Applicant stated she wanted their deposit repaid. The Tribunal appreciated there were issues between the parties particularly with regards to alleged rent arrears and explained to parties that it could not decide how the deposit would be distributed between parties and that would be a decision for Safe Deposits Scotland now that the deposit had been lodged with them. The Tribunal explained that as the Respondent had admitted she had not complied with the 2011 Regulations it could only determine what level of sanction would be imposed on the Respondent for that failure.
9. Mr Hayward admitted that his wife the Respondent had the Applicants’ deposit throughout the duration of the tenancy. He was unable to explain why when the deposit had been paid to them rather than the letting agent he and his wife had not noticed the deposit had been paid. He explained that towards the end of the tenancy they realised this after discussing the tenancy deposit with the letting agent and at that stage the deposit was lodged with Safe Deposits Scotland. The Tribunal noted the screen shot dated 15 November 2023 from Safe Deposits Scotland showing the deposit had been paid to them on 15 November 2023. Mr Hayward explained they had taken advice on that and that the deposit was paid at that stage so that the scheme administrator

could decide whether the full deposit or part of it should be returned to the Applicants. That was still in the course of being decided.

10. The Applicant submitted she felt that she had been placed under a lot of stress due to the Respondent's failure to pay the deposit into a scheme. Over three months after the tenancy ended they had still not had the deposit returned to them. She simply wanted the Tribunal to decide the amount of the sanction as the Respondent had broken the law.

Findings in Fact

11. The Applicants and the Respondent entered into a Private Residential Tenancy which commenced on 20 August 2020.
12. The Applicants paid the Respondent £700 by way of a deposit. The Respondent did not lodge the deposit into an approved scheme within 30 working days of the commencement of the tenancy.
13. The Applicants' tenancy terminated on 12 November 2023.
14. On termination the Respondent realised she had been paid the deposit personally and arranged for it to be lodged with Safe Deposits Scotland. The deposit was lodged with them on 15 November 2023. Parties are in dispute regarding the deposit. A decision as to how the deposit is to be distributed between parties is still to be taken by Safe Deposits Scotland.
15. The Applicants made the current application on 18 November 2023.

Reasons for decision

16. For the purpose of Regulation 9(2) of the 2011 Regulations an application where a landlord has not paid a deposit into a scheme administrator must be made within three months of the tenancy ending. The Tribunal found that the application was made in time, the tenancy having terminated on 12 November 2023 and the application being made on 18 November 2023.
17. Regulation 3 (1) and (2) of the 2011 Regulations provides –

“(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—
(a) pay the deposit to the scheme administrator of an approved scheme; and
(b) provide the tenant with the information required under regulation 42.

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid

to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

The tenancy in this case was a “relevant tenancy” for the purposes of the Regulations. The Respondent accepts the deposit paid of £700 at the start of the tenancy in August 2020 was not paid into an approved scheme in terms of the Regulations.

18. The 2011 Regulations were intended, amongst other things to put a landlord and a tenant on equal footing with regard to any tenancy deposit and to provide a mechanism for resolving any dispute between them with regard to the return of the deposit to the landlord or tenant or divided between both, at the termination of a tenancy. They were designed to prevent any perceived “mischief” by giving a landlord control over the return of the deposit at the termination of a tenancy.
19. The amount to be paid to the Applicants is not said to refer to any loss suffered by the Applicants. Accordingly, any amount awarded by the Tribunal in such an application cannot be said to be compensatory. The Tribunal in assessing the sanction level has to impose a fair, proportionate and just sanction in the circumstances, taking into account both aggravating and mitigating circumstances, having regard to the purpose of the 2011 Regulations and the gravity of the breach. The Regulations do not distinguish between a professional and non-professional landlord such as the Respondent. The obligation is absolute on the landlord to pay the deposit into an Approved Scheme.
20. In assessing the amount awarded, the Tribunal has discretion to make an award of up to three times the amount of the deposit, in terms of Regulation 10 of the 2011 Regulations. Mrs Barrie stated she simply wanted the deposit to be returned.
21. The Tribunal considered the Respondent had admitted her failure to comply with the 2011 Regulations. The Respondent had explained this was an oversight on her part. She had paid the Applicants’ deposit of £700 into an approved scheme as soon as she realised her error.
22. Despite the Tribunal being satisfied that the Respondent had failed to comply with her duties under Regulations 3 (1) of the 2011 Regulations, the purpose of the 2011 Regulations had not been defeated. Safe Deposits Scotland was currently deciding on how the deposit should be distributed between parties, who were in dispute.
23. The Respondent had accepted she was in breach of the Regulations and that this had been an oversight on her behalf. The Tribunal did not consider his failure to lodge the deposit with a scheme administrator to be a deliberate act to flout the 2011 Regulations. The deposit however was unprotected throughout the tenancy.

24. In all the circumstances the Tribunal considered that a fair, proportionate and just amount to be paid to the Applicants by way of sanction was the equivalent of the deposit.

Decision

25. The Tribunal accordingly made an Order for Payment by the Respondent to the Applicants of £700.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

S Evans

Legal Member

Date 3 April 2024